

AMENDED IN SENATE APRIL 26, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 402

Introduced by Assembly Member Dymally

February 15, 2005

An act to add Section 2013 to the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 402, as amended, Dymally. Family law court: marriage.

Existing law establishes procedures related to proceedings for dissolution of marriage, nullity of marriage, and legal separation, as specified.

This bill would enact the Collaborative Family Law Act, which would allow the parties to those proceedings, by written agreement, to utilize a collaborative law process, as specified, to resolve those disputes, rather than through an adversarial judicial proceeding. The bill would deem any ~~agreement or statement, communication, or work product made or arising~~ during the process, *except any written agreement entered into by the parties and prepared by their collaborative law attorneys*, confidential and inadmissible in any ~~further~~ noncriminal proceeding, *except by written agreement to the contrary by the parties and prepared by their collaborative law attorneys*, and would prohibit the court from intervening during that time. If the process terminates without settlement, the bill would then require each party to hire new counsel or represent themselves in any

further proceeding, and would require the court to set a case management conference for any petition previously filed, if any.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Collaborative Family Law Act.

3 SEC. 2. Section 2013 is added to the Family Code, to read:

4 2013. (a) If a written agreement is entered into by the parties
5 and their attorneys, the parties may utilize a collaborative law
6 process to resolve any matter governed by this code over which
7 the court is granted jurisdiction pursuant to Section 2000.

8 (b) “Collaborative law process” means the process in which
9 the parties and their attorneys agree in writing to use their best
10 efforts and to make a good faith attempt to resolve disputes
11 related to family law matters as referenced in subdivision (a) on
12 an agreed basis without resorting to adversary judicial
13 intervention, except to file the initial petition and response,
14 stipulated orders or judgments, and accompanying documents as
15 may be required under this code, or to have the court approve the
16 settlement agreement, make the legal pronouncements, and sign
17 the orders required by law to effectuate the agreement of the
18 parties as the court determines appropriate. The parties’ attorneys
19 may not serve as litigation counsel, except to ask the court to
20 approve the settlement agreement.

21 (c) If neither party files an initial petition for proceedings
22 pursuant to one of the issues listed in subdivision (a), at any time
23 during the collaborative law process the parties may agree in
24 writing to set jurisdiction over all issues to be heard by a court of
25 competent jurisdiction retroactive to any date as far back as the
26 date the parties entered into the collaborative law agreement.

27 (d) Sections 1115 to 1128, inclusive, of the Evidence Code,
28 regarding confidentiality protections on information exchanged
29 in mediation, shall also apply to collaborative law proceedings.

30 (1) All statements, communications, and work product made
31 or arising from a collaborative family law case are confidential
32 and are inadmissible in any—~~court~~ arbitration, administrative
33 adjudication, civil action, other collaborative law process, or

1 *other noncriminal proceeding, except by written agreement to the*
2 *contrary by the parties and prepared by their collaborative law*
3 *attorneys.*

4 (2) Work product includes, but is not limited to, any written or
5 oral communication between the parties and their attorneys, and
6 written or oral communication, reports, or analysis of any third
7 party professional or expert used in the collaborative law process.

8 (3) Notwithstanding this subdivision and the confidential
9 nature of the collaborative law process, all written agreements
10 entered into by the parties *and prepared by their collaborative*
11 *law attorneys* during the collaborative law process are deemed
12 ~~inadmissible~~ *admissible* in court.

13 (e) If the collaborative law process terminates without
14 settlement, each party shall seek new counsel or represent
15 himself or herself in order to proceed in litigation. Neither
16 attorney in the collaborative law process may act as litigation
17 counsel for either party.

18 (f) Pursuant to paragraph (3) of subdivision (d), all written
19 agreements entered into by the parties *and prepared by their*
20 *collaborative law attorneys* during the collaborative law process
21 are deemed ~~inadmissible~~ *admissible* in court, notwithstanding the
22 termination of the process or the confidential nature of the
23 collaborative law process.

24 (g) The collaborative law agreement shall include, but not be
25 limited to, provisions for all of the following:

26 (1) The parties' full compliance with disclosure requirements
27 under Chapter 9 (commencing with Section 2100) and candid
28 exchange of all information between the parties and their
29 attorneys as necessary to make a proper evaluation of the case,
30 including, but not limited to, each party's preliminary declaration
31 of disclosure, income and expense declaration, and schedule of
32 assets and debts, all under penalty of perjury, pursuant to Section
33 2104.

34 (2) Suspending court intervention in the dispute while the
35 parties and their attorneys are using collaborative law procedures
36 requiring court appearances pursuant to local county rules.

37 (3) Provisions for jointly hiring mental health, financial, or
38 other professionals to serve as joint experts to assist the parties in
39 the investigation, evaluation, or resolution of issues, as well as
40 assisting the parties in making informed decisions.

1 (4) Withdrawal of all attorneys involved in the collaborative
2 law process if the process does not result in settlement of the
3 dispute.

4 (5) Expectation that the parties and attorneys shall use their
5 best efforts and good faith to resolve the dissolution of marriage
6 through the collaborative law process.

7 (h) A court that is notified 30 days before trial that the parties
8 are using the collaborative law process to attempt to settle a
9 dispute may not, until a party notifies the court that the
10 collaborative law process did not result in a settlement, do any of
11 the following:

12 (1) Set a hearing or trial in the case.

13 (2) Impose discovery deadlines.

14 (3) Require compliance with pretrial orders.

15 (4) Dismiss the case.

16 (i) The parties shall notify the court if the collaborative law
17 process results in a settlement.

18 (j) If the collaborative law process does not result in a
19 settlement on or before two years of the date that the petition was
20 filed, if any, the court may set the matter for a case management
21 conference.